

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
KRISTIN A. CARMODY, M.D., M.H.P.E., :

Plaintiff, :

-against- :

NEW YORK UNIVERSITY; NYU GROSSMAN
SCHOOL OF MEDICINE; NYU LANGONE
HOSPITALS; ROBERT I. GROSSMAN, M.D.;
FRITZ FRANCOIS, M.D.; STEVEN B.
ABRAMSON, M.D.; ANDREW BROTMAN,
M.D.; and ROBERT J. FEMIA, M.D.,

Defendants. :
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21-CV-08186 (LGS-VF)

**DECLARATION OF
DR. ROBERT J. FEMIA**

I, ROBERT J. FEMIA, MD, declare under the penalty of perjury:

1. I am the Chair of the Department of Emergency Medicine (“ED”) at NYU Langone Health. This Declaration is based on my personal knowledge.

2. On December 5, 2020, I had a conference call with Nany Sanchez, Lynn Lowy, Esq., Maxine Simon and Dr. Fritz Francois to discuss plaintiff Dr. Kristin Carmody. During this conference call, there was no discussion of Dr. Carmody’s gender or any alleged complaints of discrimination that Dr. Carmody claims to have made to me, given that she did not make any such complaint to me.

3. In 2018, I decided to commission a pay equity study in the ED to ensure that attending physicians were paid fairly. Nobody asked me to do this study, and it was not the result of any complaint about pay inequity. Rather, I decided to conduct the study because of articles I read in emergency medicine journals and in the news regarding female physicians earning less

income than male physicians, and I wanted to ensure that such inequities were not happening in the ED. The results of the study confirmed that there were no such inequities.

4. Over a period of six years before the end of Dr. Carmody's employment, I selected four Vice Chairs in the ED, with three of those four being female: Dr. Carmody, Dr. Catherine Jamin and Dr. Corita Grudzen. I recruited and selected Dr. Grudzen when I was the Executive Vice Chair of the ED.

5. In June 2021, I hired Dr. Annalee Baker, a woman, as the Resident Program Director for the ED.

6. In my role as Chair of the ED, I set compensation for Vice Chairs, and then submit those numbers for approval. The Vice Chairs in the ED did not and do not have the same responsibilities (or what NYU calls "Missions") for clinical work, research and/or leadership roles. Compensation for a Vice Chair is based on a variety of factors, including their specific Missions, scope and reach of their positions, the degree to which work is across multiple NYU campuses, revenue generated, impact on patients and years of experience. Attached to this Declaration as Exhibit A is a listing of total annual compensation for individuals who held the title of Vice Chair in the ED between 2017 and 2020, as that compensation appears on each individual's IRS Form W-2.

7. Total annual compensation for the Vice Chairs could vary due to the fact that, as attending physicians, they may choose voluntarily to pick up additional clinical shifts to cover staffing needs. NYU pays all ED attending physicians the same hourly rate for such moonlighting shifts and does not differentiate that rate of pay, regardless of seniority. The rate is different only based on the time of day for the shift, with the rate higher for nighttime, weekend and holiday

shifts. Each attending physician can determine how much additional compensation she or he receives by picking up a clinical shift.

8. I understand that, in this lawsuit, Dr. Carmody claims that she was paid differently than male Vice Chairs because of her gender. I never made any recommendation regarding her compensation or any employee's compensation based on gender.

9. I understand that Dr. Carmody compares her salary to the former Vice Chair of [REDACTED], [REDACTED], a male. For 2017, Dr. Carmody and Dr. Foley had the same annual compensation of [REDACTED], effective for Dr. Carmody as of the time of her appointment to Vice Chair on February 1, 2017.

10. In 2018, Dr. Carmody received total annual compensation of [REDACTED], which was slightly less than [REDACTED] total annual compensation of [REDACTED], for a difference of [REDACTED]. I made up for this small differential by approving an increase of Dr. Carmody's salary by [REDACTED] in January 2019, retroactive to September 2018, when I requested that her annual salary be increased to [REDACTED]. This increase was designed to pay Dr. Carmody comparably to [REDACTED] (whose salary was set at [REDACTED] per his employment agreement) and was implemented after the pay study. The January 2019 pay transaction record for Dr. Carmody at NYU, which is attached as Exhibit B, states: "This is to increase Dr. Kristin Carmody's salary by [REDACTED] to bring her total compensation to [REDACTED] retroactive to 9/23/2018. This increase is to gain parity with other EM Vice chairs and was requested by Dr. Femia."

11. [REDACTED] left his Vice Chair role in 2019, and was not paid a full-year of compensation for his role, and made only [REDACTED] in 2019.

12. In August 2019, I promoted [REDACTED], a male, to be the Vice Chair, [REDACTED], while he also maintained his leadership responsibilities as System Chief of

Observation Medicine, the Medical Director of the Tisch Hospital Observation Unit, the Medical Director of the Physician Assistant Program, and a leadership role in Observation Medicine at the Long Island campus. The Observation Unit is short-stay care for patients who need 12-48 hours more of care before being discharged from the Emergency Room. [REDACTED] created this Unit at Tisch Hospital and developed best practice templates for various medical diagnoses treated in the Unit. [REDACTED] then started Observation Units at other NYU campuses in Brooklyn and on Long Island. In this role as System Chief of Observational Medicine, he was responsible for developing processes and procedures for excellent patient care and revenue generation at all three Observational Units.

13. In 2019, [REDACTED] received total annual compensation of [REDACTED]. As Vice Chair, [REDACTED] held five administrative leadership roles and performed clinical work at NYU Winthrop on Long Island. His multiple roles spanned all of NYU's clinical sites in Manhattan (Tisch Hospital and Bellevue Hospital), Brooklyn and Long Island.

14. In 2019, Dr. Carmody received total annual compensation of [REDACTED], which was higher than [REDACTED] total annual compensation that year. Dr. Carmody held two leadership roles: Vice Chair of Education and Co-Director, Emergency Medicine Ultrasound Fellowship, and she performed clinical work at NYU Tisch Hospital and Bellevue Hospital in Manhattan.

15. In 2020, due to [REDACTED] much broader scope of responsibilities as explained above and below, he received total annual compensation of [REDACTED] and Dr. Carmody received total annual compensation of [REDACTED].

16. In 2019 and 2020, [REDACTED] leadership responsibilities were much greater than Dr. Carmody's leadership responsibilities. In performing his five administrative leadership roles,

██████████ did so at NYU's campuses in Manhattan (Tisch and Bellevue), Brooklyn and Long Island. This required him to travel to those campuses and oversee the clinical operations at those locations. During this time, Dr. Carmody's leadership responsibilities were performed at Tisch and Bellevue Hospitals, while she had responsibility for a small resident and student presence on the Brooklyn Campus.

17. ██████████, a full tenured Professor, Vice Chair of ██████████ in the ED and Assistant Dean, Clinical Sciences, Office of Science and Research, and ██████████, the two other female Vice Chairs in the ED who had a larger scope of responsibilities at the time Dr. Carmody was a Vice Chair, were paid more than Dr. Carmody.

18. In 2018, ██████████ received total annual compensation of ██████████, while ██████████ (male) received total annual compensation of ██████████. In 2019, ██████████ received total annual compensation of ██████████ and ██████████ (male) received total annual compensation of ██████████. In 2020, ██████████ received total annual compensation of ██████████ and Vice Chair ██████████, a male, received total annual compensation of ██████████. ██████████ was consistently paid more than Dr. Carmody and others because, in addition to her administrative leadership role, as Assistant Dean, ██████████ had additional responsibilities across all clinical departments, and not just in the ED. In addition, she spent 50% of her employment efforts on research and brought in millions of dollars in research revenue.

19. I promoted ██████████ (female) to be the Vice Chair, ██████████ in 2019, at the same time that I selected ██████████ (male) for the same titled role. There were two Vice Chairs, ██████████ in the ED. Together, they were responsible for half a million patient visits per year, as well as setting up quality programs, work flow, best practices, safety, and community engagement. At that time, I set ██████████ and ██████████ annual compensation in

their agreements to be the same – [REDACTED] – which was approved. [REDACTED] held three administrative leadership positions – Vice Chair, Clinical Operations, the Chief of Service/Director of Clinical Operations at Tisch Hospital, and the Chief of Critical Care for Emergency Medicine – and she also performed clinical duties.

20. In 2019, [REDACTED] received total annual compensation of [REDACTED] and [REDACTED] received total annual compensation of [REDACTED]. In 2020, [REDACTED] received total annual compensation of [REDACTED] and [REDACTED] received total annual compensation of [REDACTED], for a difference of [REDACTED]. Based on payroll records, that differential is mainly due to [REDACTED] picking up additional clinical shifts.

21. In 2020, [REDACTED] (female) was paid more than [REDACTED] (male): [REDACTED] versus [REDACTED].

22. [REDACTED] (male) was the Vice Chair for [REDACTED] [REDACTED] in the ED before I became the Chair of the ED and had 24 years of experience as a physician as of 2020. I was involved with one renewal of his employment and leadership role, effective September 1, 2016. I did not renew his Vice Chair role in 2021.

23. [REDACTED] was paid more in total annual compensation than Dr. Carmody, but he had 11 more years of experience as a physician – he graduated medical school in 1992 and she graduated medical school in 2003. [REDACTED] also had about 3½ more years as a Vice Chair than Dr. Carmody did – he was appointed in September 2014 and she was appointed in February 2017.

24. I understand that, in this lawsuit, Dr. Carmody accuses me of stating at a Morbidity and Mortality quality assurance review (“M&M”) that she committed “fraud” with respect to her false entries in the Patient’s EPIC record. I did not accuse Dr. Carmody of “fraud.”

25. At this M&M, Dr. Carmody's name was mentioned, but residents and attending physicians were raising questions about Dr. Carmody's departure and already knew her identity.

26. [REDACTED] worked in the Department of Medicine, and not the ED. He never reported to me.

27. I understand that Dr. Carmody makes allegations relating to [REDACTED], who is the former [REDACTED]. [REDACTED] reported to Dr. Grossman, and never reported to me. I learned at some point in 2021 that [REDACTED] was no longer in that role. I was not involved in any way with that decision and am unaware of the basis for that decision.

28. [REDACTED], a female physician in the ED, received an increase to her compensation on September 1, 2020. That increase was not in response to any alleged complaint by Dr. Carmody to me. Rather, the ED issued its annual faculty group practice increases on that date, which included [REDACTED].

29. I never contacted Columbia or any other institution regarding the hiring of [REDACTED], who was a resident at NYU in 2020.

30. Any statements that I made regarding the facts surrounding the Patient's letter to NYU about her treatment at NYU on November 30, 2020, Dr. Carmody's falsification in the Patient's EPIC record (by stating that she conducted a physical exam that she did not conduct) and her resignation or departure were made in the context of quality assurance medical reviews, for educational purposes and/or communications with employees about her departure as the only Vice Chair of Education in the ED. I made these statements without any ill will, spite or hatred toward Dr. Carmody, and they were based on my good-faith understanding of the facts, which I believed

to be true. I liked Dr. Carmody and supported her growth, leadership and educational pursuits at NYU.

31. Any statements made by me regarding the Patient's medical condition and treatment at NYU were my medical opinions that I made for educational purposes and teaching moments for medical staff, including residents, attending physicians, physician assistants and nurses.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on October 21, 2022

A handwritten signature in black ink, appearing to read "R Femia, MD". The signature is written in a cursive, flowing style.

Dr. Robert J. Femia

EXHIBIT A

EXHIBIT IS FILED UNDER SEAL

EXHIBIT B

Position Change Request Job Description

Change Person Information Request

Change Person Information User Guide

View Person History New Window

Empl ID	1048782	Carmody,Kristin A	MSS Tracking ID	CE00063482
Empl Rcd	0		Workflow Status	Completed
Request Date	11/09/2018		Employee Status	Active
Requestor	Dibble,Nicholas		Job Indicator	Primary
Effective Date	09/23/2018	<input checked="" type="checkbox"/> Verified Date	Last Hire Date	07/01/2013

Would you like to change Position/Job Information? ☐ No ☐ Yes

Would you like to change Salary Information? ☐ No ☒ Yes Reason Salary Adjustment - Market

Would you like to change Funding Information? ☐ No ☒ Yes

Position Snapshot ?

Budgeted FTE	Allocated FTE	Available FTE	Budgeted Dollars	Allocated Dollars	Available Dollars	Snapshot Type	View Details
0.000000	0.000000	0.000000	\$0.000	\$0.000	\$0.000		View Details

Current/Future: Position/Job Information

First 1 of 1 Last

Position Number	10039940	Business Unit	NYU Grossman SOM
Company	NYU School of Medicine	Effective Date	09/23/2018 Reason
*Job Code	200045 Assoc Professor (Clinical)	*Union Code	NBU Non Union
*Department	S1811 Ronald Perelman-Emerg Med Adm	*Manager Level	9-Non-Manager
*Full/Part Time	Full-Time	*Supervisor	
*Standard Hours	35.00	*Payroll Location	MT9610 Bellevue-Emerg Medicine MailHm
*Regular/Temporary	Regular FLSA Exempt	*Work Location Type	NYU Langone Health Locations
*Shift (Union or Nursing Only)	Not Applicable	*Building	Bellevue Administration Building
*Performance Review Alternate		*Floor	Third Floor

*Direct Staff Supervision	Yes	*Research Lab	No
*Patient Contact	Yes	*Pediatric Patient Interaction	No
*Direct Patient Care Provider	Yes		

Potential interaction with Inpatient Psychiatric unit - SEL/SCR check required? ☐ No

LMC Accrual Rule	A999 - Not Applicable	LMC Pay Rule	P999 - Not Applicable
LMC Device Group	D999 - Not Applicable	Is DOE/Fingerprinting required	<input type="radio"/> No

Job Code Attributes

Salary Plan	FAC Faculty	Grade	000
Minimum		Midpoint	\$0
		Maximum	\$0

Salary Components

Carmody

Exhibit 52


6/21/22

			EMERGENC				
3	ChartField Details	61G1980122127NYUPRJSOM01F	Emergency Medicine	53202		28.038	
4	ChartField Details	61G1980122127NYUPRJSOM01N	Emergency Medicine	53202		34.375	

FringeTotals: Non-Fringe Totals: 100.000 Salary Totals:

Can this expense be absorbed within your approved budget? N/A

New Need Number

Add Documents		Personalize Find  	First  1 of 1  Last
	NYU Document Type	Document Name	
1			

Adhoc Approver Id

Work Flow Approval Status

Employee: 1048782 Rcd: 0 Submitter: DIBBLN01 - Dibble,Nicholas CanExpBeAbsorbed: NO NewNeedNBR::Approved

Standard

Self Approved
Dibble,Nicholas
HR Dept Manager
12/21/18 - 5:47 PM

Self Approved
Dibble,Nicholas
Funding Approver
12/21/18 - 5:47 PM

Self Approved
Dibble,Nicholas
Department Administrator
12/21/18 - 5:47 PM

Approved
Blackstein,Jane E
HHC-Affiliations
12/24/18 - 10:45 AM

Approved
Crowe,Wade C
Affiliations & FPO Approver
12/26/18 - 12:11 PM

Approved
Chung,Sze Wa
FGP Central Adm
01/04/19 - 1:16 PM

Comments

Chung,Sze Wa at 01/04/19 - 1:16 PM
This is to increase Dr. Kristin Carmody's salary by \$ to bring her total compensation to \$ retroactive to 9/23/18. Dr. Carmody is the Vice Chair for Acc
This increase is to gain parity with other EM Vice chairs and was requested by Dr. Femia. I discussed this increase with Melissa and Nick and agreed that it is i
confirmed that this increase can be supported by the positive budget variances.

Dibble,Nicholas at 12/21/18 - 5:47 PM
Increase of \$ to gain parity with other Vice Chairs. Approved by Department of Emergency Medicine Chair Robert Femia, MD and acknowledged by FGP
absorbed by the Adult FGP budget given recent vacancies. This takes into account the 2.6% increase on the Affiliation account eff 9/23/2018

System at 12/21/18 - 5:47 PM
Self Approved (18081,4050)

System at 12/21/18 - 5:47 PM
Self Approved (18081,4050)

System at 12/21/18 - 5:47 PM
Self Approved (18081,4050)

Comment History

Nicholas Dibble at 12/21/18 - 5:47 PM
[View History.](#)

Nicholas Dibble at 12/18/18 - 5:50 PM
[View History.](#)